

REVISED
MINUTES OF THE
STATE WATER DEVELOPMENT COMMISSION
Tuesday, September 25, 2007 – 2:00 p.m. – Room W135 House Building

Members Present:

Rep. Patrick L. Painter, House Chair
Sen. Dennis E. Stowell, Senate Chair
Sen. Gene Davis
Rep. Ben C. Ferry
Rep. Kerry W. Gibson
Rep. James R. Gowans
Rep. Michael E. Noel
Mr. Tage Flint
Mr. Brad Hancock
Mr. Dallin Jensen
Mr. Harry Judd (representing Rick Sprott)
Mr. Michael Mower
Mr. Warren Peterson
Mr. Ron Thompson
Mr. David Ure

Members Absent:

Sen. Mike Dmitrich
Sen. Scott K. Jenkins
Rep. Brad King
Mr. Larry Anhder
Commissioner Leonard Blackham
Mr. Don Christiansen
Mr. Chris Fullmer
Mr. Irvin Haws
Mr. Michael Styler

Staff Present:

Art Hunsaker, Policy Analyst
Emily R. Brown, Associate General Counsel
Joy L. Miller, Legislative Secretary

Note: A list of others present, a copy of related materials, and an audio recording of the meeting can be found at www.le.utah.gov.

1. Committee Business

Chair Painter called the meeting to order at 2:15 p.m. Sen. Dmitrich, Rep. King, and Mr. Haws were excused from the meeting.

2. Wayne County Water Issues

Fremont River Water Conservancy District Proposed Dam Project

Mr. Paul Pace, Wayne County Executive Director, U.S. Department of Agriculture, Farm Service Agency, said water that runs out of Wayne County is a 50,000 acre foot resource Utah needs to retain. He noted that six fish facilities are out of business in the county.

Mr. John Jackson, Wayne County Water Conservancy District, gave a presentation to the Commission. He said that after much research, they are considering building a 20,000-25,000 acre foot reservoir along the lower Fremont River. He stressed the need to obtain funding and help to follow through with the project and put the water to beneficial use.

Mr. Thompson said there are projects around the state that small counties can't finance but that have the ability over the long term to protect the states' resource. He asked that the Division of Water Resources look at those projects and report back to the Commission on the cost of each project.

Aquaculture Industry

Mr. Robert Judd, Utah Aquaculture Association, gave a presentation to the Commission outlining the problems faced by the aquaculture industry. He said the industry is completely regulated and dominated

by the Division of Wildlife Resources and he requested that it be more balanced and fairly regulated. He distributed a handout on economic development and fair regulation rulemaking.

MOTION: Sen. Stowell moved to request that the governor's office and the Governor's Office of Economic Development do a study of the aquaculture industry in Utah, identifying the inhibitors to its functions and the risks to those that want to invest in it. The goal of the study would be to develop a business plan. He also requested that other areas of the state be considered in addition to Wayne County. The motion passed unanimously.

3. Lake Powell Pipeline Financing

Mr. Dennis Strong, Director, Division of Water Resources, distributed "Lake Powell Pipeline Project." He said it is projected that the water from the project will be needed by the year 2020. He noted that a very important part of the project is hydropower. The estimated cost for the pipeline is \$500 million, which will be paid by the water users. Mr. Strong discussed the Board of Water Resources revolving funds. He indicated that the board's investment in water development over the past 70 years is \$542 million. Mr. Strong stated this year there is approximately \$35 million available for loans. However, there are over \$200 million worth of projects waiting in the queue.

Mr. Thompson stated it would be worth the Commission looking at how Washington County is proposing to finance its portion of the project.

Mr. Flint indicated that with creative financing, these water projects are building themselves.

Mr. Ed Alter, State Treasurer, outlined some of the recommendations of the governor's Water Delivery Financing Task Force final report. The task force determined that users should eventually pay for the costs of these projects and that conservation should be taken more seriously. With the lack of federal funding, water districts will have to do as much financing as possible to help build the Lake Powell and Bear River projects. He said the state will have to provide a large portion of the financing for these two projects - possibly through appropriations, general obligation bonds, or sales tax revenue bonds.

4. Colorado River Water Rights

Mr. Jerry Olds, State Engineer, gave a presentation to the Commission. He explained that Utah shares the Colorado River with six other states. Utah's apportionment of the water is 23 percent of the upper Colorado River allocation which ranges from 1.37 - 1.44 million acre feet. As of 2005, Utah was depleting just over 1 million acre feet which leaves 361,000 acre feet. He outlined the approved yet undeveloped applications within the Upper Colorado Basin of Utah totaling 493,100 acre feet of depletion. Mr. Olds discussed the current policy regarding protection of fish flows. He pointed out that if there is upstream development by Colorado or Wyoming, it could significantly impact the flows. He stated that Utah should develop the water within the next 20-25 years or there could be potential efforts to take some of the water.

5. Municipal Exemption from Water Forfeiture

Ms. Brown distributed and briefly reviewed "Utah Legislators' Summary of States' Water Law," "Water Rights Forfeiture Statutory Appendix," and Utah Code Section 73-1-4.

Chair Painter distributed a copy of a court case involving Nephi City. He explained that Nephi City installed a hydro unit in Nephi Canyon. A flood washed out some of the structures. The nonconsumptive right was not used for approximately 30 years. A change application was filed to put the facilities back into place and was denied by the Division of Water Rights. Nephi City found it could lose the water to forfeiture.

Mr. Hancock cited an example of a municipality that lost its water right and the events that led to the loss. He stated that poor public policy would allow something like this to happen. He stressed that the Commission consider what can be done to rectify the situation.

Mr. Fred Finlinson, Utah Water Coalition, distributed a memorandum to the Commission. He noted that the coalition developed three conceptual plans to address the issue but did not reach a consensus on any of them. He explained the provisions of the different plans.

Mr. Olds asked what the Legislature wants the state engineer to do regarding forfeiture. He noted that there needs to be some flexibility added into the law. However, he pointed out that the purpose of the water rights system is to provide order and certainty to the use of water in the state.

Mr. Richard Bay, General Manager, Jordan Valley Water Conservancy District, supported recognizing the holding of water for the reasonable future requirements of the public as an important public purpose. He also supported the concept of defining a better method for submitting proof of beneficial use.

Rep. Sylvia Anderson suggested that when a plan is developed, an arbitration committee be established rather than seeking recourse through the courts. She said that reduced or nonuse of water due to state-requested conservation should exempt the water right from being lost.

Mr. Lee Brown spoke on behalf of small water users in Tooele County. He said since Tooele County was closed to appropriation, water has gone from \$2,000 per acre foot to \$10,000. He requested that the Commission consider the possibility of forming a subcommittee to study what can be done to protect the small water user and the effects of aggressive enforcement of water rights on the small consumer.

6. Other Committee Business / Adjourn

MOTION: Sen. Davis moved to adjourn. The motion passed unanimously.

Chair Painter adjourned the meeting at 5:25 p.m.

State Water Development Commission Meeting - September 25, 2007
Comments of Mr. Brad Hancock

If the committee will allow, I know we have been here a long time but let me just tell you a little story of something that happened, and Jerry correct me if I'm wrong please, please correct it if there is a problem here.

There was a municipality that invested many many public dollars into acquiring water rights knowing that they would need them in the future. They expanded their service area because they didn't want to just service the citizens within their own municipality. They wanted to share that drink of water with those who needed it on the outlying areas. And because the state asked them, they followed the governor's mandate, they conserved as much as possible in these years and actually I think their usage went down in a couple of years in a period of expanded growth. And then as the growth hit them and it became real serious, they looked at trying to develop more water to meet this demand. In 2002 the forfeiture came to light again and was reviewed and thought about. In 2003 this particular municipality actually filed a change in point of diversion for some existing water rights within one year after the forfeiture issue came to light again. The application was considered for a change in point of diversion rather than a nonuse application thinking that a change in point of diversion would be a stronger application than nonuse because it puts the water to use or a good portion of that unused water to use in a time of need. In 2007 the decision was rendered and it was based on possible loss of right for nonuse and request for change was denied by reason that it may be an expansion of the right. The word forfeiture was never alluded to, but if that's not forfeiture, I don't know what is. It hit in a time of extreme need. There were 500 families identified that were drinking out of poor wells or even contaminated wells and hauling their drinking water. This is the plight of that municipality and there are probably several, many throughout the state that are in that same position or in a like position. So I think that poor public policy would allow something like this to happen. I think we need to take a good serious look at this and see what can be done to rectify a bad situation.